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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-144856-14

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PLR-144859-14

Date:

April 27, 2015

Legend

Grantor =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trustee =

Date 1 =

Date 2 =

Attorney =

Accountant =

Year 1 =

Year 2 =

Year 3 =

Dear :

This letter responds to your authorized representative's letter dated December 4, 2014, requesting an extension of time under § 2642(g) of the Internal Revenue Code and

§ 301.9100-3 of the Procedure and Administration Regulations to elect out of the generation-skipping transfer (GST) exemption automatic allocation rules.

The facts and representations submitted are summarized as follows:

On Date 1, a date after December 31, 2000, Grantor established an inter vivos irrevocable trust (Trust). Trust established four separate identical trusts, Trust 1, Trust 2, Trust 3, and Trust 4 (Trusts) for the benefit of Grantor's siblings, with spouse, as Trustee. Trust was funded on Date 2.

The terms of Trusts provide that Trustee will pay any or all of the income and principal of the beneficiary's account to the beneficiary. The entire trust account may be distributed pursuant to the trust terms even though the distribution may terminate the trust prior to the end of the trust term. Trusts terminate the earlier of when the beneficiary dies or reaches age 65.

At termination of Trusts, Trustee will pay all of the trust fund of the that beneficiary's trust to the beneficiary, if living, if not to the beneficiary's living issue, or, if none, to the issue of Grantor's mother's living issue other than Grantor. If any of the issue are under the age of 65, the share that will pass to an issue of Grantor's mother will be held in further trust for that issue.

Accountant prepared and filed Grantor's Year 1 Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return. Accountant failed to disclose the gifts to Trusts, and consequently, Accountant did not opt out of the automatic GST allocation rules with respect to those transfers. In Year 2, Accountant realized that Trusts had not been included on Grantors Year 1 Form 709.

In Year 3, Grantor met with Attorney to discuss further estate planning. Following the meeting, Attorney spoke with Accountant who informed Attorney that he would prepare an amended Year 1 Form 709 to report the gifts to Trusts.

It is represented that no additions have been made to Trusts since Date 2, and no distributions have been made from Trusts nor have any taxable terminations or other events occurred giving rise to GST tax liability.

Grantor requests an extension of time to opt out of the automatic allocation rules with respect to their transfers to Trusts in Year 1.

LAW AND ANALYSIS

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST). Section 2611(a) provides that the term “generation-skipping transfer” means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax imposed by § 2601 is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2641(b) provides that the term “maximum Federal estate tax rate” means the maximum rate imposed by § 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is the excess (if any) of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2631(c)(1) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate, regardless of whether such a return is required to be filed.

Section 2632(c)(1) provides that if any individual makes an indirect skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero (automatic allocation). If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(2) provides that for purposes of § 2632(c)(1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under § 2632(b)(1) or § 2632(c)(1)).

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust, as defined in § 2632(c)(3)(B). Under § 2632(c)(5)(A)(i)(I) and (II), an individual may elect to have the automatic allocation rule in § 2632(c)(1) not apply to an indirect skip, or to any or all transfers made by such individual to a particular trust.

Section 2632(c)(5)(B)(ii) provides that an election under § 2632(c)(5)(A)(i)(II) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 26.2632-1(b)(2)(iii) of the Generation-Skipping Transfer Tax Regulations provides, in part, that to elect out, the transferor must attach a statement (election out statement) to a Form 709 filed within the time period provided in § 26.2632-1(b)(2)(iii)(C) (whether or not any transfer was made in the calendar year for which the Form 709 was filed, and whether or not a Form 709 otherwise would be required to be filed for that year). The election out statement must identify the trust (except for an election out under § 26.2632-1(b)(2)(iii)(A)(4)) and specifically provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers. Further, unless the election out is made for all transfers made to the trust in the current year, the current-year transfers to which the election out is to apply must be specifically described or otherwise identified in the election out statement.

Section 26.2632-1(b)(2)(iii)(C) provides, in part, that to elect out, the Form 709 with the attached election out statement must be filed on or before the due date for timely filing (within the meaning of § 26.2632-1(b)(1)(ii)) of the Form 709 for the calendar year in which the first transfer to be covered by the election out was made.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that, in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including

evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Grantor is granted an extension of time of 120 days from the date of this letter to make an election under § 2632(b)(3) that the automatic allocation rules do not apply to the Date 2 transfer to Trusts. The election out will be effective as of the date of the transfer. The election should be made on a supplemental Form 709 for Year 1. The Form 709 should be filed with the

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Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. You should attach a copy of this letter to the supplemental Form 709. We have enclosed a copy for this purpose.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter

cc: